



13 MAY 2003

KENYON & KENYON  
One Broadway  
New York, New York 10004

In re Application of	:	
LENZING, Thomas, et al.	:	
U.S. Application No.: 10/088,841	:	DECISION REGARDING
PCT No.: PCT/DE01/02669	:	RENEWED SUBMISSION
International Filing Date: 17 July 2001	:	UNDER 37 CFR 1.42
Priority Date: 21 July 2000	:	
Attorney's Docket No.:10191/2313	:	
For: DEVICE FOR DETERMINING AT LEAST ONE	:	
PARAMETER OF A FLOWING MEDIUM	:	

In a communication issued by this Office 08 October 2002, applicant's original submission under 37 CFR 1.42 and 37 CFR 1.497 was refused for failure to satisfy the requirements of these provisions. Specifically, the communication stated that the record was unclear as to whether Anke Fleischer (who apparently executed the declaration on behalf of deceased inventor Dieter Tank) was the sole heir of the deceased inventor. This issue arose because of an apparent inconsistency in the submitted materials, described in the communication as follows:

While applicants have submitted a translation of a "Certificate Of Inheritance" naming Anke FLEISCHER as the sole heir, the attached materials imply that the deceased inventor's parents also have an interest in the deceased inventor's estate.

The communication also noted that the declaration did not satisfy the requirements of 37 CFR 1.497(b) in that it did not specifically set forth the relationship between the person executing the declaration and the deceased inventor, and it did not include the citizenship, residence, and post-office address information for both the deceased inventor and the legal representative.

On 09 December 2002, applicants filed the renewed submission considered herein. This submission includes a revised declaration which lists all three heirs of the deceased inventor identified in the filed materials (Anke Fleischer, Johannes Tank, and Eva Tank). The revised declaration also includes the information and statement of relationship required under 37 CFR 1.497(b).<sup>1</sup> However, the declaration is only executed by two of the three joint heirs. Applicants'

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<sup>1</sup> The declaration identifies the relationship for such persons as both "heir" and "legal representative" of the deceased inventor. It appears, based on submitted materials, that a legal representative has not been appointed but rather arose because of the status of "heirs." This distinction is significant, because in circumstances where a legal representative has been

submission explains that the nonsigning heir, Johannes Tank, died on 10 September 2002.

The estate of Johannes Tank is now a joint heir of the deceased inventor Dieter Tank. Accordingly, the legal representative (or all the heirs) of Johannes Tank must execute the present declaration before it can be accepted.

Because the revised declaration has not been executed on behalf of all the heirs to the deceased inventor, the declaration cannot be accepted under 37 CFR 1.42.

Based on the above, the 09 December 2002 submission under 37 CFR 1.42 is **REFUSED** without prejudice.

Applicants have **TWO (2) MONTHS** from the mailing date of this communication to submit a proper response under 37 CFR 1.42 and 37 CFR 1.497. Failure to provide a proper and timely response will result in abandonment. A proper response must include an acceptable declaration properly executed under 37 CFR 1.42 and 37 CFR 1.497 and fully executed on behalf of the deceased inventor, as discussed above.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Boris Milef  
PCT Legal Examiner  
PCT Legal Office

RMR/BM:rmr



Richard M. Ross  
PCT Petitions Attorney  
PCT Legal Office  
Telephone: (703) 308-6155  
Facsimile: (703) 308-6459

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appointed, only the signature of this person is required, whereas in circumstances where no legal representative has been appointed, the signature of all the heirs is required on the declaration.